

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

LARRY JOHN KELLY,	:	
	:	
Plaintiff	:	No. 4:CV-05-0480
	:	
vs.	:	(Complaint Filed 03/08/05)
	:	
	:	(Judge Muir)
Mr. Tanner, et al.,	:	
	:	
Defendants	:	

ORDER

April 29, 2005

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On April 9, 2003, plaintiff, Larry John Kelly, initiated a civil rights action, pursuant to 42 U.S.C. § 1983, in the United States District Court for the Eastern District of Texas. See Kelly v. DeHaven, Civil Action No. 1:03-CV-0206 (E.D. Texas 2003). On June 16, 2003, plaintiff was transferred to the Allenwood United States Penitentiary, White Deer ("USP-Allenwood"), Pennsylvania.¹ On June 1, 2004, plaintiff filed a document entitled "amendment to plaintiff's motion to amend complaint." In this document plaintiff requested that the Texas

¹Plaintiff is currently housed in the Victorville Medium Federal Correctional Institution, Adelanto, Ca.

District Court incorporate two employees of USP-Allenwood as additional defendants in his present action. Because the amendment involved persons who were strangers to the existing action, and therefore did not relate back to plaintiff's original action, see FED.R.Civ.P. 15(c)(2), the Texas District Court, by Order dated February 28, 2005, determined plaintiff's amendment to be a new cause of action, severed the defendants from the plaintiff's pending action, and transferred the plaintiff's "amendment" to the United States District Court for the Middle District, where it was filed on March 8, 2005, as a civil rights action. Plaintiff's action, however, was unable to proceed without the payment of the required filing fee or the filing of the forms required to proceed in forma pauperis.

By Order dated March 21, 2005, plaintiff was informed that his case would be dismissed without prejudice unless, within thirty (30) days, he either paid the statutory filing fee of \$250.00 or filed a properly completed application to proceed in forma pauperis and authorization form. (Doc. No. 2). Notwithstanding this admonition, thirty (30) days have elapsed and the plaintiff has neither made an appropriate submission nor requested an extension of time within which to do so.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The action is dismissed without prejudice.
2. The Clerk of Court is directed to CLOSE this case.
3. Any appeal from this order will be deemed frivolous, not taken in good faith and lacking probable cause.

s/Malcolm Muir

MUIR

United States District Judge

MM:dlb